

EXHIBIT A

VOLUME: I

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WORCESTER DIVISION

- - - - - x

DONALD P. SPEAKMAN, STEPHEN H. WEDEL and
MARK L. ROBARE, Individually and On Behalf
of All Others Similarly Situated

Plaintiffs Civil Action

v. No. 4:04-cv-40077-FDS

ALLMERICA FINANCIAL LIFE INS. &
ANNUITY CO., FIRST ALLMERICA FINANCIAL
LIFE INS. CO., and ALLMERICA FINANCIAL CORP.

Defendants

- - - - - x

DEPOSITION of DONALD P. SPEAKMAN

Wednesday, November 2, 2005

11:33 a.m.

Michelle Keegan, Court Reporter

Donald P. Speakman

11/02/2005

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APPEARANCES:

HUBBARD & BIEDERMAN, LLP

By Stephen L. Hubbard, Esq.

1717 Main Street

Dallas, Texas 75201

(214) 857-6000

Counsel for the Plaintiffs

WILMER CUTLER PICKERING HALE AND DORR, LLP

By Jonathan A. Shapiro, Esq. and

Brett R. Budzinski, Esq. and

Jared C. Miller, Esq.

60 State Street

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Counsel for the Defendants

Also Present:

Mark H. Stepakoff, Allmerica Financial

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Deposition of:

DONALD P. SPEAKMAN

By Mr. Shapiro

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PROCEEDINGS

DONALD P. SPEAKMAN

having been satisfactorily identified and duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHAPIRO:

Q. Good morning, Mr. Speakman.

A. Good morning.

Q. Could, for the record, you identify yourself, full name and current address.

A. Donald P. Speakman, 109 Saint Andrews Drive, Pittsburgh, PA 15205.

Q. I think I introduced myself to you a few moments ago, but in case I wasn't clear, my name is Jonathan Shapiro. To the left of me is Brett Budzinski and to the left of Brett is Jared Miller. We represent the defendants in this lawsuit.

The defendants in this lawsuit are three Allmerica businesses, Allmerica Financial Corporation, Allmerica Financial Life Insurance & Annuity Company and First Allmerica Financial Life Insurance Company. Are you familiar with those businesses?

2 (Pages 2 to 5)

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1 Q. Other than Mr. Wirtz and Mr. Hubbard and
 2 Mr. Biederman, do you have any other lawyers
 3 presently?
 4 A. Yes.
 5 Q. The name of those other lawyers?
 6 THE WITNESS: Is he talking about Rod?
 7 Q. I'm just asking their names, sir. I'm not
 8 asking about anyone in particular.
 9 A. I have another attorney. I can't remember
 10 his last name. It's been a long day.
 11 Q. I know. Can you remember his first name?
 12 A. Rod.
 13 Q. Other than Rod last name unknown, do you
 14 have any other attorneys?
 15 A. No.
 16 Q. For what purpose did you retain Rod?
 17 A. For an issue with the NASD.
 18 Q. What is the issue with the NASD?
 19 A. We had an audit and I retained Rod.
 20 Q. Who is the "we"?
 21 A. My firm.
 22 Q. Speakman Financial Group?
 23 A. Uh-hmm. And Main Street.
 24 Q. Does Rod also represent Main Street?

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1 A. I believe he does.
 2 Q. When was the audit?
 3 A. Approximately about a year ago.
 4 Q. How did you first learn about the audit?
 5 A. I'm sure we got some sort of notification.
 6 Again, my brother Dave would have worked with the
 7 Meckenstock organization, my broker/dealer. So Dave
 8 probably told me. I don't remember specifically.
 9 Q. Was this the first time that you or your
 10 organization has been audited by the NASD?
 11 A. Yes.
 12 Q. Putting aside the NASD issue, have you ever
 13 had -- Strike that.
 14 Have you ever been the subject of an
 15 inquiry from the SEC?
 16 A. No.
 17 Q. How about any state insurance regulator?
 18 A. No.
 19 Q. How about any state securities regulator?
 20 A. Not that I'm aware of.
 21 Q. How about any other state or federal agency?
 22 A. Not that I'm aware of.
 23 Q. Is this, sir, your first interaction with
 24 NASD?

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1 A. No.
 2 Q. What were your prior interactions with NASD?
 3 A. I had one case from 1990, I think it was,
 4 that ended up being a subject of discussion with the
 5 NASD.
 6 Q. Did you provide testimony with respect to
 7 that one case?
 8 A. I'm sure I did. I mean, it was 1990. But
 9 yes.
 10 Q. Who was your lawyer during that matter?
 11 A. Jim something or other -- Chores, who now
 12 works for the NASD.
 13 Q. With Allmerica, correct?
 14 A. Yeah.
 15 Q. So Allmerica knew about that one?
 16 A. Yeah.
 17 Q. Did you notify Allmerica when you learned of
 18 the current NASD audit?
 19 A. No, I did not personally notify Allmerica.
 20 Q. To your knowledge, did anyone notify
 21 Allmerica on your behalf?
 22 A. I have no idea.
 23 Q. Did you ask anyone to?
 24 A. No, I did not personally ask anyone to.

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1 Q. To your knowledge, what is the -- who --
 2 Strike that.
 3 To your knowledge, who is under scrutiny
 4 by the NASD?
 5 MR. HUBBARD: I object to the form of
 6 the question. If anyone.
 7 A. I don't understand the question.
 8 Q. What's your understanding of the NASD
 9 inquiry that you're presently involved in?
 10 MR. HUBBARD: I object to the form of
 11 the question.
 12 A. My understanding is they wanted confirmation
 13 that the exchanges that we were doing were in our
 14 clients' best interests.
 15 Q. Is that NASD inquiry still pending?
 16 A. I'm not clear on that.
 17 Q. Has anyone notified you that it has been
 18 closed? And just answer yes or no.
 19 MR. HUBBARD: If you would have to
 20 reveal attorney-client confidences, I'd tell you not
 21 to do that until you consult with your attorney
 22 that's representing you there.
 23 A. I'm not going to answer that.
 24 Q. Let me establish a record. Sir, did you

Donald P. Speakman

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1 understand the question I asked?
 2 A. Yes.
 3 Q. Do you know the answer to the question?
 4 A. I believe I do.
 5 Q. Without revealing anything you've said to
 6 Rod last name unknown or that Rod said to you, do
 7 you know the status of the NASD inquiry? Yes or no.
 8 A. Yes.
 9 Q. Is the NASD inquiry of you still active?
 10 A. I'm not answering that question.
 11 Q. Okay.
 12 MR. HUBBARD: If this will shorten
 13 things --
 14 MR. SHAPIRO: It won't shorten things.
 15 I want to keep asking questions. Thank you, Steve.
 16 MR. HUBBARD: Mr. Speakman, if he's
 17 asking you to divulge attorney-client privileged
 18 information, you shouldn't -- I advise you not to do
 19 that.
 20 MR. SHAPIRO: He already just refused to
 21 answer, so you're a little late.
 22 MR. HUBBARD: I'm not a little late.
 23 Q. Do you know if anybody else is the subject
 24 of the NASD inquiry?

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1 A. Yes.
 2 Q. Who else?
 3 A. Allmerica gave the NASD a list of all their
 4 advisors. And I think -- My understanding is they
 5 encouraged the NASD to investigate everybody.
 6 Q. Do you know that the NASD has investigated
 7 anyone other than yourself and Main Street?
 8 A. Yes.
 9 Q. Who else has the NASD investigated?
 10 MR. HUBBARD: Well, Mr. Speakman, if
 11 it's information that has been given to you by your
 12 attorney, that's attorney-client privilege.
 13 THE WITNESS: It is.
 14 MR. HUBBARD: Then you shouldn't be
 15 testifying to any of this. If it's information you
 16 received from your attorney, that's privileged. And
 17 he shouldn't even be asking you the questions.
 18 A. I'm not going to answer any questions about
 19 the NASD investigation.
 20 Q. Hold on. We need to take them one at a
 21 time.
 22 MR. SHAPIRO: Just so we're clear for
 23 the record, Mr. Hubbard, is it your position that
 24 the name of someone who's the subject of an inquiry

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1 is privileged?
 2 MR. HUBBARD: If he's been given that
 3 information by his attorney, yes, of course it is.
 4 MR. SHAPIRO: Sir, facts aren't
 5 privileged. Communications are.
 6 MR. HUBBARD: Wait a second. I don't
 7 know -- I'm not going to let this witness testify to
 8 attorney-client communication. If he has received
 9 information from the NASD, he can testify to that.
 10 Q. Sir, with which attorney did you have these
 11 communications?
 12 A. Rod.
 13 Q. Are the others -- Strike that.
 14 With whom have you discussed with in any
 15 way, shape or form the NASD inquiry other than
 16 Mr. Hubbard, Mr. Biederman or Mr. Rod?
 17 A. Well, we have kind of an offshoot of the
 18 Allmerica study group, all the people in the class
 19 that are involved in this litigation, and we've had
 20 phone conferences where we've discussed the NASD.
 21 Q. Have lawyers been on each of those phone
 22 conferences?
 23 A. I don't know.
 24 Q. When was the last time you discussed the

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1 NASD inquiry with your study group?
 2 A. Six months ago, perhaps.
 3 Q. Who was on the call?
 4 A. I don't recall. There was 30 people on the
 5 call.
 6 Q. Who raised the topic?
 7 A. I don't recall.
 8 Q. Well, have you told anybody that you're the
 9 subject of an NASD investigation?
 10 A. Yes.
 11 Q. Who have you told?
 12 A. Other advisors.
 13 Q. How about their names, sir?
 14 A. It would be very similar to the list of
 15 names I gave you the first time.
 16 Q. Do you remember having a conversation with
 17 anyone in particular about it?
 18 A. I've talked to a lot of advisors about my
 19 situation with the NASD.
 20 Q. Why did you talk to the other advisors about
 21 your situation with the --
 22 A. So we could learn from each other. If we're
 23 going through similar challenges, then we can
 24 learn -- we can share ideas with each other.

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1 Q. To your knowledge, are any other members of
2 the study group going through similar challenges?

3 A. Which study group are you referring to now?

4 Q. The one that you previously just referred to
5 as being among those with whom you've raised your
6 NASD situation.

7 A. I believe there are other Allmerica advisors
8 that are being -- have had various levels of inquiry
9 from the NASD. That's my understanding. I don't
10 know any factual information.

11 Q. Fair enough, sir. Did any of them tell you
12 that fact?

13 A. I believe -- I honestly -- This is not
14 attorney-client.

15 Q. Sure, sure.

16 A. I don't remember. But I know -- I have the
17 impression that the way other people were talking,
18 that I'm not the only one who's had an issue with
19 the NASD who worked for Allmerica.

20 Q. Did you testify before the NASD?

21 A. Yes.

22 Q. How many days, sir?

23 A. Two days.

24 Q. Did you tell any of your clients that you

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1 Q. Fair enough. And I'm not suggesting
2 otherwise. I'm just asking if it was on the U4.

3 To your knowledge, have any other former
4 Allmerica agents testified before the NASD?

5 A. I'm not sure.

6 Q. Have you told any of the other Allmerica
7 agents that you testified before the NASD?

8 A. Yes.

9 Q. Did you tell any of them the questions that
10 you were asked?

11 MR. HUBBARD: I object to the form of
12 the question.

13 A. No. What I shared -- No.

14 Q. Well, what did you share with them about
15 your NASD testimony?

16 A. Well, there was various documents showing
17 various studies that were done that displayed the
18 benefit of annuitization, of how annuity contracts
19 work, asset allocation, and I provided numerous
20 studies like that to the NASD.

21 At one point I offered them to people in
22 the study group, that if anybody thought they might
23 be going through similar things and they wanted some
24 of these studies, that I would be glad to provide

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1 have, to use your term, an NASD situation?

2 A. Tell any clients. I'm not comfortable
3 saying no because I have some clients that I'm
4 fairly close with that I certainly could have -- I
5 asked different people to say prayers for me the day
6 of my hearing. I certainly could have asked some
7 clients to pray during my hearing so that I would
8 stay nice and calm.

9 Q. Other than asking clients to pray for you
10 with respect to the NASD testimony, can you think of
11 any other discussions you've had with clients about
12 the matter?

13 A. No, not off the top of my head.

14 Q. Did you disclose it on your U4?

15 A. Whatever has to be done on my U4 I feel
16 extremely confident has been done, if anything has
17 been required.

18 Q. Fair enough, sir. I'm not suggesting either
19 way. That's something you've delegated to someone
20 else, yes?

21 A. Yes. I don't believe that the inquiry that
22 I had with the NASD, because there was no
23 accusations made, that anything even belongs on a
24 U4.

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1 them the studies. And I also encouraged them to
2 read the studies to make sure they were doing the
3 right thing for their clients.

4 Q. Did you discuss with any of the former
5 Allmerica agents how your NASD testimony went?

6 MR. HUBBARD: I object to the form of
7 the question. Mr. Speakman, you have separate
8 counsel for that proceeding. I'd feel very
9 uncomfortable with you being examined on all that
10 with your counsel not present.

11 I've let some of these questions go, but
12 at this point in time if you want to ask any
13 additional questions concerning NASD proceedings,
14 I'd request we do that with Mr. Rod Vincent present.

15 Q. What's your schedule look like next week,
16 Mr. Speakman?

17 MR. HUBBARD: We will confer -- I'll
18 confer with Mr. Speakman about that.

19 Q. Do you have availability next week?

20 MR. HUBBARD: We're not going to do it
21 on the record. If you want to talk with me about
22 it, we'll do it. That's it. We're not going to
23 have a discussion on the record about schedules.

24 MR. SHAPIRO: Just so the record is

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1 clear, are you going to instruct the witness not to
2 answer any more questions about the NASD whatsoever?

3 MR. HUBBARD: I just did. I just -- I
4 didn't instruct him. I told you that I feel
5 uncomfortable with you going into detailed questions
6 about a proceeding that his counsel is not present.
7 I think it's inappropriate of you. I think you're
8 asking questions that are inappropriate. From your
9 position, you shouldn't be asking those questions.

10 Q. Sir, do the matters at issue in the NASD
11 situation have anything to do with the replacement
12 of Allmerica annuities?

13 A. Yes.

14 MR. HUBBARD: I'll let you answer that
15 question. I'm going --

16 Q. Were some of those annuities the subject of
17 the Trail Program upon which you've based your
18 federal court lawsuit?

19 A. Correct.

20 Q. Did you speak to Mr. Wedel about your NASD
21 testimony?

22 MR. HUBBARD: All right. I've got --
23 Both Mr. Speakman and I have to leave for the
24 airport.

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1 If you want to ask other detailed
2 questions about the NASD inquiry, which are highly
3 inappropriate -- You're obviously trying to get this
4 witness to answer questions without the assistance
5 of his counsel in that proceeding. I think it's
6 totally inappropriate, Jon. I don't know what
7 you're trying to do here.

8 If you want to continue this
9 questioning, we will provide or arrange a time when
10 his counsel can be present to represent him in
11 connection with that situation.

12 Q. Mr. Speakman, has Allmerica asserted claims
13 against you in this lawsuit?

14 A. They have a counterclaim. Is that what
15 you're referring to?

16 Q. Sure. You're aware of that?

17 A. Yeah. I read it.

18 Q. Any part of that counterclaim, to your
19 knowledge, based on Allmerica's allegations that
20 you, Mr. Speakman, did not comply with regulatory
21 requirements?

22 MR. HUBBARD: I object to the form of
23 the question.

24 A. My regulatory record is perfect.

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1 MR. HUBBARD: He's asking you about the
2 counterclaim without showing you the counterclaim.
3 So if you can recall, say yes or no or I don't
4 recall.

5 Q. Do you recall that any part of the
6 counterclaim that Allmerica has asserted against
7 you, sir, concerns allegations that you did not
8 comply with your regulatory requirements?

9 A. I would like to see the actual document if
10 we're going to talk about it.

11 Q. Fair enough. Without the document -- I
12 realize you don't have it in front of you. Do you
13 have any knowledge on that topic without the
14 document?

15 A. I've read the document.

16 Q. Sure. Do you have any memory?

17 A. Yes.

18 Q. Okay. What's your memory?

19 MR. HUBBARD: You want him to
20 remember --

21 A. Pertaining to what?

22 Q. Has Allmerica asserted a claim against you
23 based in part on the allegation that you have not
24 complied with regulatory requirements?

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1 A. I believe that that's part of their
2 counterclaim.

3 Q. Okay. Have you told any of your clients
4 about your lawsuit against Allmerica?

5 A. Yes.

6 Q. About how many clients have you told?

7 A. I have no idea. I mean, at various seminars
8 that we've had people have raised the question, Are
9 you suing Allmerica? If they've asked me that, I've
10 said, Yes.

11 Q. So the record is clear, the only time you've
12 spoken to clients about your lawsuit against
13 Allmerica is in response to a question from a
14 client?

15 MR. HUBBARD: I object to the form of
16 the question.

17 A. I didn't say that.

18 Q. In fact, sir, did you put up on an overhead
19 slide a copy of the complaint that was filed against
20 Allmerica on your behalf?

21 A. Yes.

22 Q. Did you consider that important information
23 for your clients to know?

24 A. Yes.

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1 Q. Do you ever tell the client if they don't
2 ask?
3 A. In most cases it's irrelevant.
4 Q. Do you ever tell the client if they don't
5 ask?
6 A. In most cases it's irrelevant.
7 Q. Sir, why don't we try it this way. It's a
8 yes or no question. Why don't you answer it yes or
9 no or I don't know, and then you can take as much
10 time as you'd like to explain your answer. Okay?
11 MR. HUBBARD: I object to the form of
12 the question. If you can answer it, do so. If not,
13 tell him you can't.
14 Q. Do you ever tell the client if they don't
15 ask what commissions you're earning from the sale of
16 a replacement annuity?
17 A. No.
18 Q. Fair to say, then, you certainly don't
19 provide that information in writing?
20 MR. HUBBARD: I object to the form of
21 the question.
22 A. No.
23 Q. No, you don't provide it in writing,
24 correct?

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1 A. Correct.
2 Q. Have you ever seen the movie "Wall Street,"
3 sir?
4 A. Yes.
5 Q. Have you ever broached the topic of the
6 movie "Wall Street" in one of your client seminars?
7 A. Yes.
8 Q. What does the movie "Wall Street" have to do
9 with the financial services you provide to your
10 clients?
11 MR. HUBBARD: I object to the form of
12 the question.
13 A. The "Wall Street" movie has nothing to do
14 with the services I provide my clients.
15 Q. What does the movie "Wall Street" have to do
16 with the financial interests of your clients in any
17 way?
18 MR. HUBBARD: I object to the form of
19 the question.
20 A. Probably none.
21 Q. Did you broach the topic of the movie "Wall
22 Street" in client seminars in an effort to maintain
23 persistency of annuity contracts underwritten by
24 Allmerica?

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1 A. No.
2 MR. HUBBARD: Jonathan, if we want to
3 catch our planes, we have to leave now.
4 MR. SHAPIRO: Fair enough. Two more
5 questions.
6 Q. Are you under any obligation today to do
7 your level best to maintain persistency of Allmerica
8 annuities?
9 MR. HUBBARD: I object to the form of
10 the question.
11 A. Repeat the question.
12 Q. Are you under any obligation today, sir, to
13 maintain persistency of Allmerica annuities?
14 A. I'm under an obligation to my clients and do
15 what is best for my clients.
16 Q. How about any obligations to Allmerica?
17 A. None.
18 MR. HUBBARD: I object to the form of
19 the question.
20 Q. Have you ever been?
21 A. When Allmerica provided a viable product
22 with a viable rated company with a viable asset
23 allocation model, absolutely.
24 Q. At what point in time, sir, did your

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1 obligation in that regard to Allmerica stop?
2 MR. HUBBARD: Objection to the form of
3 the question.
4 A. In my opinion, it changed dramatically
5 beginning in September of '02, whenever the ratings
6 dropped significantly and my clients started getting
7 very nervous.
8 MR. SHAPIRO: Okay. Well, I don't want
9 you to be late for your plane and I don't want you
10 to be late for your plane.
11 MR. HUBBARD: Okay.
12 MR. SHAPIRO: What we will do is if we
13 can have a conversation tomorrow by, say -- I know
14 you'll be back late tonight.
15 MR. HUBBARD: If I leave now I might be.
16 MR. SHAPIRO: -- 11:00 a.m. to talk
17 about the continuation of Mr. Speakman's
18 deposition --
19 MR. HUBBARD: That's fine.
20 MR. SHAPIRO: -- to make sure we have an
21 opportunity to do so prior to our class
22 certification deadline and also to discuss some of
23 these outstanding document issues.
24 MR. HUBBARD: We'll have a conference

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Donald P. Speakman

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1 call with you.
 2 MR. SHAPIRO: Super.
 3 BY MR. SHAPIRO:
 4 Q. And Mr. Speakman, if you can just do your
 5 part in having a conversation with your attorney
 6 about your availability because I know this lawsuit
 7 is something of an inconvenience to you. Is that
 8 fair enough?
 9 A. No comment.
 10 MR. HUBBARD: We'll have a conversation.
 11 Thank you.
 12 (Whereupon the deposition
 13 was adjourned at 5:53 p.m.)
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1 COMMONWEALTH OF MASSACHUSETTS
 2 SUFFOLK, SS.
 3
 4 I, Michelle Keegan, Registered Professional
 5 Reporter and Notary Public in and for the
 6 Commonwealth of Massachusetts, do hereby certify
 7 that DONALD P. SPEAKMAN, the witness whose
 8 deposition is hereinbefore set forth, was duly sworn
 9 by me and that such deposition is a true record, to
 10 the best of my ability, of the testimony given by
 11 the witness.
 12 I further certify that I am neither related to
 13 or employed by any of the parties in or counsel to
 14 this action, nor am I financially interested in the
 15 outcome of this action.
 16 In witness whereof, I have hereunto set my hand
 17 and seal this 4th day of November, 2005.
 18
 19
 20
 21
 22 Notary Public
 23 My commission expires:
 24 May 12, 2012

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ERRATA SHEET

1 I, DONALD P. SPEAKMAN, do hereby certify that I
 2 have read the foregoing transcript of my testimony,
 3 and further certify that said transcript is a true
 4 and accurate record of my testimony (with the
 5 exception of the following corrections listed
 6 below):
 7

Page	Line	Correction
8		
9		
10		
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21 Signed under the pains and penalties of perjury
 22 this day of , 2005.
 23
 24

DONALD P. SPEAKMAN

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